IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LDG.) NO. 2653 OF 2005

Jaichitra Balakrishna. ... Petitioner

Versus.

University of Mumbai & others. ... Respondents.

Shri Mihir Desai for the Petitioner.

Shri M.D.Naik, A.G.P. for Respondents Nos.1 and 2.

Shri P.A.Sawant with Shri C.T.Chandratre for Respondent No.3.

CORAM : H.L.GOKHALE, &
ABHAY S. OKA, JJ.

DATED : 1st FEBRUARY, 2006.

P.C.:

1. Heard Shri Desai in support of this petition. Rule. Rule made returnable forthwith. Shri Naik appears for Respondents Nos.1 and 2 and Shri Sawant appears for Respondent No.3. Replies have been filed by the Respondents. Counsel are heard.

2. The petition seeks a direction that the Petitioners' results for 5th and 6th semester examinations for Master of Computer Application held in May 2005 be declared. The petition arises on the background that as per the University Rules, the admissions to various semesters of the three years course can be granted only when the earlier semesters are cleared and/or requisite number of subjects are cleared and candidate is permitted to keep terms for the

subsequent semester. The grievance against the Petitioner was that she could not be permitted to appear for the sixth semester examination inasmuch as as far as the 5th semester was concerned, she was not eligible according to the College as per the University Rules. The fact, however, remains that the College had admitted her all through out and permitted her to give examination.

3. This being the position, the Petitioner had filed one petition earlier bearing Writ Petition No.1153 of 2005. When that matter was heard by Division Bench to which one of us (H.L.Gokhale J.) was a party, it was noted on 2nd May 2005 that the Petitioner had attended the 5th and 6th Semesters which she was allowed to attend and had paid the fees and at the last moment she was informed by the University that she was ineligible to appear for this examination. Therefore, an order was passed permitting her to appear for the examination. The petition was subsequently withdrawn on 3rd October 21005 with liberty to the Petitioner to make a representation to the University.

4. The University considered the representation and relying upon the relevant rules rejected the same by decision dated 8th November 2005. The University held that the performance in the examination will be treated as null and void since it was not in accordance with the

Rules and Regulations of the University. It is therefore that the present petition has been filed.

5. After this petition came up, we asked the University to keep the result of the Petitioner available for the benefit of this Court in a sealed cover. That result has been tendered. We have opened the sealed cover and find that the Petitioner has passed in these examinations which were held in May 2005.

6. In the facts of this case, what we find is that primarily because of Rules of ATKT and requirement of passing certain number of papers before going into the next semester, the result has been declared null and void. These are all aspects to be considered by the College and we are told that the College has taken action against the concerned officer. The fact, however, remains that as far as the Petitioner is concerned she cannot be faulted for whatever what the College has done. Any such admission made in violation or in ignorance of the Rules cannot be led to affect the innocent candidates. This has been the view taken by the Apex Court in the case of **Shri Krishnan v/s. The Kurukshetra University, reported in AIR 1976 S.C. 376.** That view has been reiterated in **Ashok Chand Singhvi v/s. University of Jodhpur and others, reported in (1989) 1 S.C.C. 399.** The Apex Court held that when a candidate concealed nothing from the university and

authorities granted admission to him after considering all the relevant facts, he cannot be made to suffer by cancelling his admission or his attendance in the classes and denying him the benefit which flows otherwise from the rules. The Apex Court noted in the Judgment in the case of Kurukshetra University that the candidates were admitted to Engineering College though they were not eligible for admission, and inspite of that the admission of the students was not disturbed in the Kurukshetra case nor in the case of Jodhpur University. Similar is the case in the present matter. In our view since the candidate has passed both the semesters, proper course will be to declare as having passed the said examinations. Accordingly we direct the University to declare the result of the Petitioner for 5th and 6th semester examinations and degree be awarded to her.

7. Petition disposed of in the above terms.

(H.L.Gokhale, J.)

(Abhay S.Oka, J.)